

1 utility statutes to adopt the just and reasonable standard.

2 Q Sure. Absolutely.

3 So we've got 252 which requires to be approved;  
4 and that an amendment, must be in the public interest.

5 A May only reject.

6 Q Okay. Under Georgia law, the prices must be just  
7 and reasonable. And so, therefore, wouldn't you agree that  
8 agreements approved by this Commission, to be consistent  
9 with the public interest, had to meet the pricing standard  
10 of just and reasonable?

11 A No, I don't actually -- I don't actually think  
12 that -- I think you just conflated, if that's the way that  
13 word is actually pronounced and/or spelled. I'm not sure  
14 that the requirements of 46, dot, 2, dot, 23 which is in  
15 state law actually apply to decisions rendered under the  
16 federal act. Normally you would object to me answering this  
17 question, instead of asking it.

18 But I'm not entirely clear, based on my limited  
19 legal knowledge, that the state law standard actually  
20 supercedes the federal process under 252. I kind of thought  
21 that there were times the Commission operated under its  
22 state law, and some times that it operated under its federal  
23 law.

24 MR. WALSH: Mr. Chairman, at this point could I  
25 ask, if we're going to look at part of this statute, that we

1 look at the entire -- the entirety of this provision. The  
2 remainder of the statute actually talks about -- the entire  
3 thing in Section (b) talks about that the commission is not  
4 required to fix and determine specific rates, tariffs, or  
5 charges for the services offered by the telecommunications  
6 companies, and looks at the factors that the commission's  
7 going to consider. I think if we're going to ask the  
8 witness to look at a particular provision for the record, it  
9 should -- the witness should have the entire statute.

10 CHAIRMAN WISE: Would you like for Mr. Gillan to  
11 look at the entire thing, or just take notice?

12 MR. WALSH: I think that the witness should have  
13 the opportunity to look at the entire -- entire statute.  
14 The Commission can take notice.

15 CHAIRMAN WISE: You know, Mr. Walsh, it's great  
16 that -- that you're protecting Mr. Gillan here. But I think  
17 he's done a -- you know, I think he does a pretty good job  
18 himself. He's got his counsel here with him. Unless  
19 -- unless you think the Commission needs protecting. And  
20 I'm -- I'm not sure that we're going there.

21 MR. WALSH: Okay. I just --

22 MS. FOSHEE: Thank you, Mr. Chairman.

23 MR. WALSH: -- for the record that --

24 CHAIRMAN WISE: We'll take notice of the entire  
25 opinion.

1 MR. WALSH: Okay.

2 MR. MAGNESS: I'd just say we'll -- I mean, we  
3 certainly have no problem taking notice of the entire  
4 section. I think if Mr. Gillan has any problem protecting  
5 himself, we have the statute book and we can show them to  
6 him if this line of legal question continues. But he seems  
7 to be doing okay so far, so --

8 MS. FOSHEE: Would -- would anybody else like to  
9 object?

10 (Laughter.)

11 MS. FOSHEE: Okay.

12 CHAIRMAN WISE: Note the laugh, as well, Ms.  
13 Foshee.

14 MS. FOSHEE: Yeah, thank you. Please put that in  
15 the record.

16 BY MS. FOSHEE:

17 Q Okay, let me ask it this way, Mr. Gillan. Is it  
18 your testimony that this Commission would have approved  
19 rates for the consumers in Georgia that were unjust and  
20 unreasonable?

21 A Certainly not knowingly. I mean, the issue here  
22 is obviously you file things and the Commission allowed them  
23 to -- treated them as approval. Did not reject, you know.  
24 We're using this -- the language in the statute.

25 I am not going to go anywhere near a statement

1 that says that the Commission has rendered a judgment that  
2 either compels it to follow that precedent here, or really  
3 means that the Commission looked at those rates and made a  
4 judgment as to whether they were reasonable. Yes, you have  
5 the point that in the statute the Commission should -- would  
6 have rejected, had it found that they weren't in the public  
7 interest. But I think, let's be honest here, it was a much  
8 more neutral action than that. And this is the case where  
9 we're investigating whether those prices are reasonable.  
10 And near as I can tell, there is only one set of evidence  
11 that even addresses the prices in this proceeding, and it's  
12 showing that those rates are not reasonable.

13 Q Let's look at loops and transport. I believe you  
14 said in your summary something to the effect of that the use  
15 of special access for loops and transport was just wrong. I  
16 want to go back and look at paragraph 664 again. And  
17 understanding, of course, that the paragraph has the word  
18 "might," can we agree that the FCC said that a RBOC might  
19 prove that its rate for loops and transport is just and  
20 reasonable if it is at or below the rate at which the BOC  
21 offers comparable functions to similarly situated purchasing  
22 carriers under its interstate access tariff.

23 A Yes, it says that.

24 Q Okay. So that is a test that the Commission could  
25 use?

1           A     It is a -- it is a possible way to analyze the  
2 rates, yes. And my testimony goes into an extensive  
3 discussion as to why that possible way should be rejected.  
4 But it is a way that the FCC identified.

5           Q     Now, we can agree, I assume, that tariffs under  
6 federal law, such as interstate special access tariffs, must  
7 be just and reasonable; correct?

8           A     For the purpose for which they were set, yes.

9           Q     Okay.

10          A     Of course, the purpose for which they were set is  
11 not local competition.

12          Q     What about intrastate tariffs? Can we agree that  
13 under Georgia law intrastate tariffs must be just and  
14 reasonable? Yes or no, please.

15          A     Well, based on the partial legal citation you  
16 provided me, it would suggest that. I have not analyzed the  
17 Georgia law.

18          Q     Okay.

19          A     But, again, special access was used for a very  
20 different purpose than as a input to carriers attempting to  
21 compete with BellSouth in the provision of local exchange  
22 services. And even a finding of just and reasonable for one  
23 thing doesn't mean that it's just and reasonable for  
24 another.

25                   Obviously the FCC -- the ILECs went back, after

1 the FCC identified this test, and, for a different purpose,  
2 attempted to convince the FCC that they shouldn't be  
3 required to make loops and transport available because they  
4 made special access available, and the FCC was quite firm in  
5 its rejection of the view that special access was sufficient  
6 to enable local competition. I think they went so far as to  
7 call it a hideous irony, a phrase that I don't recall the  
8 FCC using in any other order.

9 Q Let me talk to you about that, Mr. Gillan.  
10 Because I think what you've done, in my opinion, is confuse  
11 two parts of the order. The paragraph that you talk about  
12 is in the section of the triennial review remand order --

13 MR. MAGNESS: Commissioners, Ms. Foshee has now  
14 just prefaced this question with her opinion of what the law  
15 is.

16 MS. FOSHEE: I'll rephrase.

17 MR. MAGNESS: And if she has a question --

18 CHAIRMAN WISE: Please do.

19 MS. FOSHEE: I'll rephrase.

20 BY MS. FOSHEE:

21 Q Mr. Gillan, the portion of the TRRO to which you  
22 are referring, that is in the section of the order that  
23 talks about the impairment test; is it not?

24 A Yes.

25 Q And that is the section in which the RBOCs argued

1 that special access should be counted in the impairment test  
2 as a competitive alternative; correct?

3 A Yes. And that caused the FCC to have to look at  
4 whether or not there was any evidence to suggest that  
5 special access rates are sufficient for there to be a  
6 competitive local marketplace. And I did include in my  
7 answer, however, earlier, that it was for a different  
8 purpose. I've recognized that the FCC was talking about  
9 impairment, and not just and reasonable.

10 I also point out to you that it's my testimony  
11 that impairment findings and just and reasonable are two  
12 different topics, and it's your company's position that they  
13 should be treated the same.

14 Q Sure, we made that argument to the FCC, and the  
15 FCC rejected it; right?

16 A Yes. But I don't think -- I think you failed to  
17 see my point. I was pointing out that impairment analysis  
18 and just and reasonable analysis can be different, as -- as  
19 you're showing in terms of this discussion.

20 Q Well, what the FCC did -- and I'll be happy to  
21 show it to you -- in the TRRO, after it did the impairment  
22 test and said, "Um, sorry, RBOCs, you're not allowed to use  
23 special access as a competitive alternative for purposes of  
24 finding impairment."

25 It then went on --

1           MR. MAGNESS: Mr. Chairman, I'm going to object  
2 again. She's stating her view of what the FCC did in the  
3 order. She's not asking the witness questions.

4           MS. FOSHEE: I will ask him a question if I'm  
5 allowed to finish.

6           MR. MAGNESS: Well, but --

7           COMMISSIONER BAKER: (Presiding) I -- okay.

8           MR. MAGNESS: -- the question's prefaced with a  
9 speech about what BellSouth's view of what the FCC order  
10 did.

11          COMMISSIONER BAKER: Okay, thank you, Mr. Magness.  
12 I understand.

13          MR. MAGNESS: That's not cross-examination.

14          COMMISSIONER BAKER: Ms. Foshee, you can lead the  
15 witness all you want. But, I mean --

16                You can lead him. But, you know, I believe  
17 -- don't share -- you know, Mr. Gillan, I'm sure, can take  
18 care of himself, and he's got competent counsel. But, I  
19 mean, ask the leading question and --

20          MS. FOSHEE: Okay.

21          COMMISSIONER BAKER: -- and move on.

22 BY MS. FOSHEE:

23           Q     Did the FCC, in paragraph 142, and I --

24                Do you have the TRRO in front of you?

25           A     No, but actually I don't need it for this.



1           Q     Okay. Did the FCC, in paragraph 142, subsequent  
2 to the paragraph that you cited in your testimony, state  
3 "Specifically for DS1 and DS3 transport, we adopt a 12-month  
4 plan to -- for competing carriers to transition to  
5 alternative facilities or arrangements, including self-  
6 provided facilities, alternative facilities offered by other  
7 carriers, or special access services offered by the  
8 incumbent LEC."

9           A     Yes, I believe you read that correctly.

10          Q     Okay. And, in fact, with the high cap loops and  
11 transport impairment test, that was done on a wire center  
12 basis; correct?

13          A     They decided to use a wire center as a proxy for  
14 other factors, yes.

15          Q     Okay. But even if the Commission took to heart  
16 your criticism that the switching -- the non-impairment  
17 finding for switching was done on a nationwide basis, and so  
18 it didn't have the necessary granularity, which I believe is  
19 an argument you make, that would not at all be true in the  
20 case of loops and transport, would it? Because that was  
21 done on a wire center basis; correct?

22          A     Ms. Foshee, I haven't a clue where you got a  
23 discussion about -- in this docket, in this testimony,  
24 anything to do with my discussion about nationwide  
25 impairment of switching.

1           Q     Okay, that's -- well, that's good, then. Do you  
2 agree, then, that the FCC did find competitive alternatives  
3 for switching on a nationwide basis?

4           A     No, I believe that the FCC decided that it would  
5 find a -- reach a finding of non-impairment.

6           Q     Okay.

7           A     Now, the FCC has gone to great lengths in the  
8 Omaha forbearance order to point out that when it did non-  
9 impairment analyses, it was over -- it was deliberately  
10 over-inclusive. So it was taking things away from CLECs in  
11 more places than they thought -- than -- than it believed  
12 that a more detailed, factual analysis would even  
13 demonstrate.

14                     But we've never got past the fact that you and I  
15 disagree about something more fundamental. The FCC does not  
16 say, and has never said, non-impairment means there's enough  
17 competition to keep you from charging unreasonable rates for  
18 facilities and services used to provide local exchange  
19 services. Special access was identified as something that  
20 you might look at here. The FCC itself later looked at it  
21 and concluded, at least in the terms of -- for impairment,  
22 but it concluded that there's no evidence that special  
23 access pricing permits you to have a competitive local  
24 exchange market.

25                     I think even more fundamental is Congress knew

1 that you offered special access service when it wrote the  
2 competitive checklist. If they wanted 271 to mean all you  
3 had to do was do what you were doing, it would have been a  
4 very short competitive checklist. We wouldn't have needed  
5 to have Section 271 include loops and transport if all you  
6 had to do was continue to offer special access services.

7 Q I think you started your answer with exactly the  
8 point that I was trying to make. You referenced the Omaha  
9 order, and you complain about the switching impairment  
10 because it wasn't done with the -- the granularity or the  
11 specificity to have any meaning.

12 A Could you direct to my -- direct me to my  
13 testimony --

14 Q It was what you --

15 A -- where you say I'm making that point?

16 Q -- it was what you just said in your answer. And  
17 if I'm wrong, that's great. But I think we can agree that  
18 for loops and transport we did -- that the FCC did its  
19 impairment analysis on a wire center basis; right?

20 A Yes.

21 Q So on a wire center basis, it looked at  
22 competitive alternatives -- or this Commission looked at  
23 competitive alternatives in each wire center before it  
24 determined non-impairment; right?

25 A No.

1 Q No? How is that no?

2 A No. Because you don't -- actually, the criteria  
3 for the wire centers don't look at competitive alternatives.  
4 It looks at proxies that the FCC selected; you look at the  
5 number of business lines and you look at these number of  
6 collocations. You're not making -- the Commission's not  
7 making any kind of finding as to whether or not there's  
8 competition. It is merely applying a mathematical test that  
9 the FCC adopted, that the FCC describes as over-inclusive,  
10 and coming up with findings as to where 251(c) access should  
11 no longer be permitted.

12 But it's -- it's not like the Commission got down  
13 and really looked at what people were -- what alternatives  
14 were in those wire centers in those routes, which prices  
15 those were charging. It wasn't that kind of analysis at  
16 all.

17 Q Are you asking this Commission to relitigate all  
18 of those issues in this proceeding?

19 A I'm not even testifying on those issues. You're  
20 just choosing to cross-examine me on them. I'm testifying  
21 as to the fact that your rates are not just and reasonable;  
22 they're unreasonably high for purposes of local competition.

23 Your -- your claim that you should just be able to charge  
24 special access and whatever you want on switching is -- is a  
25 -- is a demonstration of market power and the Commission

1 should set the rates I'm recommending. I'm not asking the  
2 Commission to do anything with impairment.

3 Q But your contention that all of your -- the entire  
4 premise of your argument, as I understand it, right, is that  
5 there is no competition, which is why we've been able to  
6 coerce people into entering these commercial agreements;  
7 right?

8 MR. MAGNESS: Commissioners, I object to that as  
9 just a flat-out mischaracterization. Mr. Gillan has already  
10 said he's not saying, and his testimony doesn't say they  
11 were coerced. Ms. Foshee is just deliberately  
12 mischaracterizing his testimony again, after he's already  
13 corrected her on the record today.

14 COMMISSIONER BAKER: Okay, sustained.

15 BY MS. FOSHEE:

16 Q You've -- you've testified about a 271 rate for  
17 switching in a number of different proceedings, haven't you,  
18 Mr. Gillan?

19 A Yes.

20 Q Okay.

21 A Two.

22 Q And in your Tennessee DeltaCom testimony, you  
23 proposed TELRIC as the 271 switching rate; correct?

24 A I think that's an unfair characterization. I  
25 pointed out that TELRIC would be a just and reasonable rate.

1 In the context of that case, I believe that there was no  
2 time to develop an analysis of what -- of an alternative  
3 rate. I mean, this is -- I think that first initial  
4 recommendation was roughly two years ago. It -- the  
5 Commission then adopted -- or asked the parties to provide a  
6 best and final offer, which gave me an opportunity to  
7 perform some limited analysis in the ITC^DeltaCom rate, and  
8 I -- and my client proposed a rate above TELRIC that was  
9 based on an analysis that I provided that client.

10 Q Mr. Gillan, do you need me to hand out your  
11 -- your DeltaCom testimony, or will you accept, subject to  
12 check, that what you wrote in that testimony was, "The  
13 existing UNE rates for local switching have already been  
14 found by the Authority to be just and reasonable. The  
15 Commission has determined that these rates comply with  
16 252(d) of the Act, and that section requires the rates for  
17 network elements to be just and reasonable. Consequently,  
18 the existing UNE rates already satisfy the fundamental  
19 requirement that they be just and reasonable."

20 And that's what you asked the Authority to adopt;  
21 correct?

22 A Well, the statement you read --

23 Q Yes or no, and then you can answer.

24 A No. I would like to see the testimony, since you  
25 have cited a statement that is completely true, but did not

1 end with a recommendation at all.

2 COMMISSIONER BAKER: Do you know where she read  
3 from or do you need the cite?

4 THE WITNESS: No, I don't, and this was --

5 MS. FOSHEE: 17.

6 THE WITNESS: -- this was in 2003.

7 COMMISSIONER BAKER: Okay. Page 17?

8 MS. FOSHEE: Yes. Thank you.

9 BY MS. FOSHEE:

10 Q And actually, Mr. Gillan, if you want to look at  
11 page 18, lines 3 and 4, it says, "There is no reason to  
12 permit BellSouth to charge just and reasonable rates higher  
13 than those already in effect."

14 A Okay, let's take this one step at a time.

15 Yes, I testified that UNE rates were just and  
16 reasonable. By definition and by law UNE rates must be just  
17 and reasonable.

18 On page 17 I pointed out that the rates  
19 established by the Tennessee Regulatory Authority were old,  
20 and that there was evidence to suggest that they were at  
21 that time above TELRIC levels actually, because I was  
22 comparing them to rates set more recently by this Commission  
23 in March 2003. So I was making the point that the existing  
24 rates that the Tennessee Authority had established were, in  
25 fact, just and reasonable; and that there was evidence to

1 indicate that they were actually above TELRIC levels, or  
2 would have been above TELRIC levels, had the Commission done  
3 a more updated cost study.

4           So, I mean, I think what is fair to say is I was  
5 trying to point out then that the rate -- if the Commission  
6 adopted the then TELRIC rate, they were probably locking in  
7 an inefficiently high price. As I indicated, the Commission  
8 then asked the parties to provide a best and final offer,  
9 and I was able to perform additional analysis on behalf of  
10 ITC^DeltaCom that recommended a rate that was clearly above  
11 even the TELRIC rates that the Commission had established.

12           So in this proceeding I was recommending a rate  
13 that the -- that the Tennessee Commission ultimately  
14 adopted, that was higher than TELRIC, although it wasn't in  
15 this piece of testimony in that proceeding.

16           Q     What rate did you file for switching in the  
17 Momentum FCC case?

18           A     I'm sure you know the answer. It was a rate  
19 across the BellSouth region. Except for Tennessee, which  
20 had already established a rate.

21           Q     Well, the fact that I know the answer isn't really  
22 relevant. What -- what rate did you --

23           A     Well, I mean, if you know the answer, then if you  
24 just tell me subject to check, I'll agree with it. I just  
25 don't want to try and remember the rate. I don't want to



1 spar with you over it.

2 Q Okay.

3 A It was 5.90 something, I thought.

4 Q 5.91 sound right?

5 A Okay.

6 Q Okay.

7 A I was criticized by your economist for not using a  
8 -- an incremental cost methodology, which should have  
9 produced a lower rate.

10 Q And then here your rate is 6.86.

11 A Here I had the opportunity to have access to cost  
12 studies which was denied us at the FCC. Or you don't really  
13 have an opportunity to conduct the kind of discovery that  
14 you have available to you here. In addition, I'm setting  
15 rates for loops, transports, and switching, and I applied  
16 the same methodology across the board.

17 Finally, the rate that I recommended in the  
18 Momentum case at the FCC would have applied in every single  
19 BellSouth rate except for Georgia. And as a result, there's  
20 some averaging that goes on between cost structure in  
21 Georgia and cost structure in other states. So it's not an  
22 apples to apples comparison.

23 Q But it's fair to say three different cases, three  
24 different methodologies; right?

25 A No, it's not fair to say.

1 Q Okay.

2 A The methodology that the Tennessee Authority used  
3 to set the rate and the methodology that I duplicated at the  
4 FCC were the same methodology. They suffered from an  
5 infirmity. The infirmity was it was based on your historic  
6 costs. But that was the only information I had available to  
7 me publicly when I made those rate proposals.

8 In this case I had the incremental cost, or at  
9 least the argue -- not incremental, but the TELRIC and the  
10 claimed TELRIC cost information provided the BellSouth, and  
11 I was able to propose a methodology that relied on that; in  
12 part, in response to your criticism of me at the FCC.

13 In addition, I needed a methodology here that I  
14 could apply uniformly to loops, transport, and switching. I  
15 did not have that -- that need in any of the other  
16 proceedings. So there's only been two methodologies that  
17 I've suggested. And I've always maintained that the  
18 methodology used by Tennessee and the one that was presented  
19 to the FCC would produce -- would likely produce rates that  
20 were inappropriately high because it was based on an  
21 embedded cost methodology.

22 Q Have you withdrawn or amended the rate you filed  
23 with the FCC in the Momentum case?

24 A No.

25 Q Okay.

1           A     There is not a process to take advantage of the  
2 information that we've developed here and insert it into  
3 that process. So it's not like -- there is no way to,  
4 quote, "amend it" to my knowledge.

5           Q     Now, when you talk about -- in your testimony  
6 about the margins over TELRIC, what is, in your opinion, the  
7 right multiple over cost? Is it five percent, ten percent?

8           A     The rates that I'm recommending are designed to  
9 provide a 20 percent contribution under the assumption that  
10 your TELRIC cost -- your cost analysis is a -- is not  
11 already inflated.

12          Q     Okay. So 20 percent over cost is what you think  
13 is just and reasonable?

14          A     Yes, those are the rates that I've recommended.  
15 Yes.

16          Q     Is that what you think is just and reasonable?

17          A     I think obviously those are the rates that I've  
18 recommended, and I believe that they're just and reasonable.  
19 Yes.

20          Q     Okay. Are you familiar --  
21 Momentum is one of your clients; right?

22          A     Yes.

23          Q     Okay. Are you familiar with --

24                 And, well, I would assume that you believe that  
25 Momentum's rates are just and reasonable and therefore

1 lawful as well; right?

2 A I've never looked at Momentum's rates.

3 Q Okay. But you wouldn't argue that one of your own  
4 client's rates is unjust and unreasonable, I take it?

5 A Nor would I sit here, without having done any  
6 analysis, and claim that they are.

7 Q Okay. Well, let me show you --

8 MR. MAGNESS: I would object. I mean, there's  
9 been a lot of test -- questions on legal conclusions. The  
10 just and reasonable standard is a legal conclusion. Is she  
11 asking does the Momentum rate satisfy the just and  
12 reasonable standard that is applicable to BOCs under Section  
13 271? I don't know. I think we're starting to --

14 COMMISSIONER BAKER: Okay. I mean --

15 MS. FOSHEE: I know -- understand he's not a  
16 lawyer. I understand he's not an economist. If he can  
17 answer the question --

18 COMMISSIONER BAKER: Well, I -- I heard the  
19 question about do you consider your client's rates just and  
20 reasonable.

21 MS. FOSHEE: Well, he's testified ours aren't.  
22 So, therefore, I assumed --

23 COMMISSIONER BAKER: I don't have a problem with  
24 it.

25 MS. FOSHEE: Okay.

1           COMMISSIONER BAKER: But I don't -- Mr. Magness,  
2 just make an objection. All parties, make objections, don't  
3 give me a speech. Okay? I don't like that, where attorneys  
4 start testifying on the record. If you have a problem, just  
5 say irrelevant, you know, argumentative, whatever. Asked  
6 and answered. Just make it. And we'll -- if I need more  
7 explanation, I'll ask for it.

8           Go ahead and proceed, Ms. Foshee.

9           MS. FOSHEE: Thank you.

10           I'm going to show you a copy of a web page from  
11 your client, Momentum Telecom. And when you get it, you can  
12 take a minute to look at it. But it has two enterprise  
13 products, business products on there. One they call  
14 MomentumBiz 60, and one they call MomentumBiz 600. One is  
15 27.95 a line, and one is 37.95. And I'll represent to you  
16 that we pulled this off the Web -- off the Internet.

17           THE WITNESS: You didn't print the whole page.  
18 What -- what is the part of the page I can't see?

19           MS. FOSHEE: I don't know. You're welcome to go  
20 back and pull it off the Web page yourself, if you think  
21 it's not -- you know, not accurate. But if you'll accept it  
22 today, subject to check.

23           And then I want to show you a chart that we've put  
24 together.

25           THE WITNESS: I don't want to be difficult, but

1 all I can tell, looking at this, is that it's incomplete.  
2 Now, it could be incomplete by a little bit, or it could be  
3 incomplete by a lot. I don't know. But I -- I mean, I'll  
4 go down this line of questioning with you. But --

5 MS. FOSHEE: That's fine.

6 BY MS. FOSHEE:

7 Q Now, Mr. Gillan, when you conducted your analysis  
8 for this case, I assume you looked at the discovery that  
9 BellSouth produced.

10 A The discovery that you provided to CompSouth?

11 Q Yes.

12 A Yes.

13 Q Okay. And what I have here is a chart that shows  
14 the rates for BellSouth's filed costs; the rates for what's  
15 labeled the GPSC staff proposed TELRIC, which are now the  
16 GPSC's approved rates as of this morning; and the rates  
17 under the enterprise DS0 wholesale platform, all of which I  
18 assume you are familiar with.

19 We then have a column for MomentumBiz 60 and  
20 MomentumBiz 600 based on the information off this Web site.  
21 You see that?

22 MR. MAGNESS: Commissioners, my objection to this  
23 document is there are a number of numbers that are not in  
24 the record in this case, that are not in evidence, that I  
25 think just asking a witness to check -- to accept -- say

1 subject to check, when there are very detailed items from  
2 filed cost studies, staff proposals that were not in Mr.  
3 Gillan's testimony, is an objectionable line to even go  
4 down.

5 COMMISSIONER BAKER: Mr. Gillan, are you familiar  
6 with any of the numbers contained in this exhibit that  
7 you've been handed?

8 THE WITNESS: No, but, Commissioner, it's so  
9 obvious to me, looking at this, that BellSouth has conducted  
10 a totally flawed analysis that I'd be glad to go through it  
11 with Ms. Foshee to point out the errors when she tries to  
12 make her points.

13 MR. MAGNESS: I'll withdraw the objection.

14 (Laughter.)

15 MS. FOSHEE: Thank you.

16 COMMISSIONER BAKER: Go ahead, Ms. Foshee.

17 MS. FOSHEE: All right.

18 BY MS. FOSHEE:

19 Q Okay, if you look at this chart under column C,  
20 we've got the enterprise DS0 platform commercial agreement  
21 rate over our proposed cost, 23 percent. And I believe we  
22 agreed that 20 percent was what you thought was just and  
23 reasonable.

24 A Okay, stop.

25 Q Over --

1 A Stop.

2 Q Okay.

3 A Stop.

4 All right, you're in column C?

5 Q Yes, sir.

6 A Okay. And what do you think the 25.22 is?

7 Q That's the enterprise DSO platform rate for  
8 switching.

9 A To -- to who? To -- this is what you think --

10 Q In the commercial agreement.

11 A -- this is what you think you would charge --

12 Q Correct.

13 A -- Momentum? Okay. All right, the 2.55 estimated  
14 usage, how did you estimate that usage?

15 Q We used -- estimated it based on the figures in  
16 the cost models.

17 A There are -- what figures in the cost models?

18 Q Accepted subject to check, you're welcome to  
19 dispute it. That's what our folks put together as our  
20 estimated usage.

21 MR. MAGNESS: Commissioners, I'm sorry. But this  
22 is -- to say accept it subject to check and let's continue  
23 cross-examination, when he's asking questions about the  
24 factual basis for something that's been put in front of him  
25 for the first time, they could have filed testimony with any



1 of this in it, and they chose not to.

2 So, for Ms. Foshee to stand here and essentially  
3 testify with a cross exhibit, and then say, "Oh, don't worry  
4 if it's not true or not. Just -- just -- let's just say it  
5 is." Mr. Gillan at least has a right to get the answers to  
6 those questions.

7 MS. FOSHEE: If it's a problem for Mr. Gillan, he  
8 -- his proposed rate is based on our proposed filed cost,  
9 which is column A.

10 COMMISSIONER BAKER: All right, well, I --

11 MS. FOSHEE: So I'd be happy to leave it there.

12 COMMISSIONER BAKER: -- I think it's clear that  
13 Mr. Gillan is asking for an explanation of the source of  
14 -- of the number and you can't -- it's going to be reflected  
15 in the record, and we'll take that in consideration as far  
16 as the validity and the value to be given to this exhibit  
17 and to these questions.

18 MS. FOSHEE: Absolutely. And, again, his column A  
19 is exactly what he relied on for his proposed cost in this  
20 proceeding, I assume.

21 And really the two columns that I think are most  
22 relevant are the MomentumBiz 60 and the --

23 MR. MAGNESS: Your Honor --

24 COMMISSIONER BAKER: I -- I understand. I  
25 -- yeah, I don't need the -- I mean --